

Solid Waste Regulation Reform
Revisions to 310 CMR 19.000
Final Regulations – 2/14/14

[**Note to reader:** We have included only those parts of the regulations which were proposed to be revised in the draft regulations, portions that are being revised based on comment and parts helpful for the reader to understand the revisions being made.]

310 CMR: DEPARTMENT OF ENVIRONMENTAL PROTECTION

19.006 Definitions

Active Landfill means a landfill that has an authorization to operate pursuant to 310 CMR 19.042 and for which the Department has not approved facility closure completion pursuant to 310 CMR 19.140(6).

Asbestos Waste means Asbestos-containing Material and Asbestos-containing Waste Material as defined in 310 CMR 7.00, *Air Pollution Control*.

Closed Landfill means a landfill for which the Department has determined that the facility closure has been completed or has approved a post-closure monitoring plan pursuant to 310 CMR 19.140.

Construction and Demolition Waste (C&D) Processing Facility means a handling facility where construction and demolition waste is brought, stored and processed (usually by sorting, crushing, shredding, screening, etc.) prior to reuse or transport to a solid waste disposal facility or to other types of facilities for recycling, recovery or reuse.

Construction and Demolition Waste (C&D) Transfer Station means a transfer station permitted by the Department to accept fifty (50) tons per day or more of construction and demolition waste. A C&D waste transfer station may accept other types of solid waste in accordance with its permit.

Expansion means:

1. For a landfill, a horizontal or vertical increase in the size of the landfill beyond the horizontal or vertical limits specified or approved in the permit; and
2. For a transfer station:
 - a. In the case of a transfer station permitted by the Department to accept less than 50 tons per day (TPD), an increase in the tonnage acceptance limits approved in the permit that would result in the facility accepting 50 TPD or more; and
 - b. In the case of a transfer station permitted by the Department to accept 50 TPD or more, an increase in the tonnage acceptance limits of more than twenty-five percent (25%) beyond the limits approved in the permit, determined on a cumulative basis since the last new or expanded transfer-station permit was issued to the facility.

3. For any other handling facility or combustion facility, an increase in the tonnage acceptance limits beyond the tonnage limits approved in the facility permit.

Handling Facility means any facility that is not a disposal facility and that is used for the storage, processing or treatment of solid waste.

Medical or Biological Waste means Medical or Biological Waste as defined in 105 CMR 480.000, *Minimum Requirements for the Management of Medical or Biological Waste (State Sanitary Code Chapter VIII)*.

Responsible Official means an individual who is duly authorized to bind the entity (e.g., but not limited to, a corporation, limited liability company, partnership, public entity, sole proprietorship or trust) which is subject to these regulations 310 CMR 19.000.

Special Waste means any solid waste that is determined not to be a hazardous waste pursuant to 310 CMR 30.000 and that exists in such quantity or in such chemical or physical state, or any combination thereof, so that particular management controls are required to prevent an adverse impact to the public health, safety or the environment from the collection, transport, transfer, storage, processing, treatment or disposal of the solid waste.

Third-Party Inspection means an inspection conducted by a third-party inspector in accordance with 310 CMR 19.018.

Third-Party Inspector means an individual registered with the Department to conduct third-party inspections in accordance with 310 CMR 19.018.

19.007: Access Rights of the Department

This section relates to the rights of the Department to enter properties and to obtain and review information to verify compliance with M.G.L. c. 21A, §§ 2 and 8, St. 1987, c. 584, M.G.L. c. 21H, M.G.L. c. 111, §§ 150A and 150A1/2, and/or 310 CMR 19.000, in the handling, management, transfer, processing, storage, treatment, disposal, use or reuse of solid waste.

(1) Access to Facilities and Properties. At all reasonable times and without prior notice, personnel or authorized representatives of the Department may enter any facility or other property where solid waste has been, is being, or may be, placed, disposed, stored, transferred, handled, managed, processed, treated, used or reused, for the purposes of: protecting the public health, safety or the environment; preventing or abating nuisances; assessing, preventing or remediating damage to the environment; or determining or enforcing compliance; provided that personnel or authorized representatives of the Department present Department-issued identification and receive the consent of the owner, operator or person in control of said facility or property. Notwithstanding the foregoing, personnel or authorized representatives of the Department may enter a facility or property without such consent as authorized by the conditions of any authorization, determination, modification, permit, or other approval, by the conditions of any consent order or other consented to enforcement document, if emergency conditions require immediate entry, or as otherwise authorized by law.

(2) During Inspection. After entry, personnel or authorized representatives of the Department may investigate, sample, photograph, or inspect any records, condition, equipment, practice, operation or property and make examinations and evaluations of a facility or other property specified in 310 CMR 19.007(1) to determine and enforce compliance with M.G.L. c. 21A, §§ 2 and 8, St. 1987, c. 584, M.G.L. c. 21H, M.G.L. c. 111, §§ 150A and 150A1/2 and/or 310 CMR 19.000 or take or arrange for actions authorized by M.G.L. c. 21H, § 4.

(3) Access to Information. Where necessary to ascertain facts relevant to compliance or to actual or potential harm to public health or safety, actual or potential nuisances, or actual or potential damage to the environment that may be caused by the handling, management, transfer, processing, storage, treatment, disposal, use or reuse of solid waste or relevant to the truth, accuracy and completeness of submittals to the Department, including but not limited to, the authority of any responsible official, the Department may request and any person shall, within a reasonable time, furnish the requested information and shall permit said Department personnel or authorized representatives to have access to and to copy or to take images of, all records relating thereto.

(4) Duty to Cooperate. The owner and operator of a facility or other property and the person possessing information as specified in 310 CMR 19.007(3) shall in no way restrict, impede, or delay an inspection or requests for information by personnel or authorized representatives of the Department where such inspection and requests are made pursuant to a reasonable request in accordance with 310 CMR 19.007 or with the conditions of any authorization, determination, modification, permit, or other approval, or pursuant to the conditions of any consent order or other consented to enforcement document, or as otherwise authorized by law.

(5) Warrants. Upon denial of access or if the Department cannot locate with reasonable efforts the owner, operator or person in control of a facility or property, or upon refusal of a person to provide information requested, the Department may seek, from a court, judge, justice or magistrate, a warrant authorizing personnel or authorized representatives of the Department to conduct a reasonable search of the facility or property, or to obtain the information requested. This section shall not preclude the Department from gaining access through other legal means, including, but not limited to, a court order or injunctive relief.

19.011: Signatories, General Certification, and Engineer's Supervision

(1) Signatories and General Certification. Any application for a permit, authorization to construct, authorization to operate, permit modification, and any determination, certification, report and any other document submitted to the Department pursuant to 310 CMR 19.000, shall be signed by the appropriate responsible official. Any person required by 310 CMR 19.000 or any order or other enforcement document issued by the Department to submit any document to the Department shall identify himself or herself by name, profession, and relationship to the applicant and legal interest in the facility and make the following statements:

I, [name of responsible official], attest under the pains and penalties of perjury that:

(a) I have personally examined and am familiar with the information contained in this submittal, including any and all documents accompanying this certification statement;

(b) based on my inquiry of those persons responsible for obtaining the information, the information contained in this submittal is, to the best of my knowledge, true, accurate, and complete;

(c) I am fully authorized to bind the entity required to submit these documents and to make this attestation on behalf of such entity; and

(d) I am aware that there are significant penalties, including, but not limited to, possible administrative and civil penalties for submitting false, inaccurate, or incomplete information and possible fines and imprisonment for knowingly submitting false, inaccurate, or incomplete information; and

(e) (for a responsible official submitting a third-party inspection report pursuant to 310 CMR 19.018(8)(b)1.) I provided any information required by 310 CMR 19.018 and requested by the third-party inspector in a timely fashion and did not unduly influence the third-party inspector; and

(f) (for a responsible official submitting a transfer station certification pursuant to 19.035(4)):

1. I have accurately stated whether the transfer station is in compliance with its permit and all other applicable requirements in 310 CMR 16.00 and 19.000 including, but not limited to, 310 CMR 19.043;

2. I have accurately identified any and all violations of 310 CMR 16.00 or 19.000 or the terms and conditions of any permits or other approvals issued thereunder by the Department;

3. if the transfer station is not in compliance, I have stated what the owner and operator will do to return the transfer station to compliance and the date by which compliance will be achieved; and,

4. plans and procedures to maintain compliance are in place at the transfer station and will be maintained even if processes or operating procedures are changed.

(2) Engineering Supervision. This subsection, 310 CMR 19.011(2), does not apply to any documents submitted to the Department pursuant to 310 CMR 19.018. All papers pertaining to design, construction, operation, maintenance, or engineering of a site or a facility shall be completed under the supervision of a Massachusetts registered professional engineer knowledgeable in solid waste facility design, construction and operation and shall bear the seal, signature and discipline of said engineer. The soils, geology, air modeling, air monitoring and groundwater sections of an application or monitoring report shall be completed by competent professionals experienced in the fields of soil science and soil engineering, geology, air modeling, air monitoring and groundwater, respectively, under the supervision of a Massachusetts registered professional engineer. All mapping and surveying shall be completed by a registered surveyor.

19.013: Exemptions

(1) Facilities and Operations Not Subject to 310 CMR 19.000. Any facility or operation exempted from site assignment by the Site Assignment for Solid Waste Facilities Regulations, 310 CMR 16.00, is exempted from the requirements of 310 CMR 19.000.

19.016: Post-closure Use

(1) No person shall use a solid waste management facility site for any purpose after closure without:

- (a) obtaining a written approval from the Department for any post-closure use on a landfill's final cover or affecting an appurtenance to said landfill, including but not limited to, appurtenances required for the management of leachate, landfill gas and stormwater; or
- (b) submitting a valid certification in accordance with 310 CMR 19.035 for a post-closure use at a transfer station which is not a C&D transfer station; or
- (c) obtaining a presumptive approval in accordance with 310 CMR 19.034 for any other type of post-closure use at a solid waste facility not subject to 310 CMR 19.016(1)(a) or (b).

19.018: Third-Party Inspections.

(1) Purpose. 310 CMR 19.018 sets forth third-party inspection requirements for specific types of facilities.

(2) Applicability.

(a) The third-party inspection requirements at 310 CMR 19.018 shall apply to the following types of facilities and to individuals who conduct third-party inspections at such facilities:

- 1. active landfills;
- 2. closed landfills;
- 3. handling facilities;
- 4. combustion facilities; and
- 5. other solid waste activities or facilities, as determined by the Department.

(b) Effective date. The third-party inspection requirements of 310 CMR 19.018 shall be effective 180 days from **[the effective date of this regulation]**.

(c) Existing third party inspection requirements. Where a facility has an existing third-party inspection requirement established in a permit or enforcement document issued prior to **[the effective date of this regulation]** the facility shall use that inspection frequency (in the existing permit or enforcement document) if it is more frequent than the frequency specified in 310 CMR 19.018. All other requirements of 310 CMR 19.018 shall apply to such third-party inspections. (d) Nothing in 310 CMR 19.000 shall be construed to limit the Department from determining that more frequent third-party inspections or more stringent requirements for third-party inspections are required for a facility. When deemed necessary by the Department, such alternate inspection frequency or more stringent requirements shall be set forth in the facility's permit, authorization to operate, or other written approval, order or other document issued by the Department.

(3) Types of Inspections. The owner and operator of a facility listed at 310 CMR 19.018(2)(a) shall have the following types of third-party inspections conducted at the facility in accordance with the performance standards and other requirements of 310 CMR 19.018:

- (a) facility operation and maintenance inspections;

- (b) waste ban inspections at any facility with a waste ban compliance plan approved by the Department in accordance with 310 CMR 19.017; and
- (c) any other third-party inspection as directed by the Department.

(4) General Requirements for Owners and Operators.

- (a) Each owner and operator of a facility shall ensure that the facility:
 - 1. is inspected by a third-party inspector who is registered with the Department pursuant to 310 CMR 19.018(5);
 - 2. is inspected according to the frequency and the performance standards set forth in 310 CMR 19.018(6) and (7); and
 - 3. submits copies of all third-party inspection reports to the Department in accordance with 310 CMR 19.018(8).
- (b) The owner and operator shall not conduct their own third-party inspections and shall not retain any of the following individuals to conduct such third-party inspection:
 - 1. a person with daily on-site responsibility for the operation or management of the facility to be inspected;
 - 2. a person with a financial interest in such facility;
 - 3. a spouse, parent, child, or sibling of the owner or operator;
 - 4. the spouse, parent, child, or sibling of any employee of the owner or operator;
 - 5. an employee of the owner or operator; provided that a municipal owner or operator may retain as a third-party inspector a municipal employee from a department, board or office of the municipality that is separate from the department, board or office of the municipality that owns or operates the facility (e.g., a municipal engineer or board of health agent may inspect a transfer station managed by the municipality's department of public works).
- (c) The owner and operator shall allow the third-party inspector full access to the facility and its records related to any solid waste activities carried out at the facility, for the purpose of performing any activity related to conducting the third-party inspection or preparing the third-party inspection report, provided that the owner and operator may deny the third-party inspector access to confidential or proprietary business information. The owner and operator shall in no way restrict, impede, or delay a third-party inspection.
- (d) The owner and operator shall inform the third-party inspector when the owner or operator or any of his or her employees learns of the date of the third-party inspection in advance of the third-party inspection. The owner and operator shall provide true, accurate and complete information which is not misleading to the third-party inspector.

(5) General Requirements, Registration and Qualifications for a Third Party Inspector.

- (a) Third-Party Inspector Requirements. Each individual performing inspections pursuant to 310 CMR 19.018 shall have the continuing duty to meet the following performance standards to ensure that his or her registration is maintained pursuant to 310 CMR 19.018(5):
 - 1. be registered according to the process set forth in 310 CMR 19.018(5)(b) prior to conducting any third-party inspection pursuant to 310 CMR 19.018;

2. file with the Department an updated qualifications statement every two years that is signed and certified in accordance with 310 CMR 19.011(1);
 3. file with the Department an updated qualifications statement within 30 days when there is a change in the individual's licensure status or professional standing;
 4. complete all training requirements required under this section;
 5. personally conduct and complete third-party inspections in accordance with the performance standards in 310 CMR 19.018(6) through (7);
 6. prepare accurate and complete third-party inspection reports in accordance with the performance standards in 310 CMR 19.018(6) through (7) and submit third-party inspection reports to facility owners and operators in accordance with the requirements of 310 CMR 19.018(8);
 7. not make any false, inaccurate, incomplete or misleading statements in any third-party inspection report; and
 8. provide any information regarding third-party inspections to the Department upon request as soon as possible but in no event more than 7 business days following receipt of the request.
- (b) Registration. To be eligible to conduct a third-party inspection required by 310 CMR 19.018, an individual shall register with the Department in advance by filing a qualifications statement. The qualifications statement is a self-certification by an individual, on a form provided by the Department, documenting that he or she meets or exceeds the minimum qualification requirements set forth at 310 CMR 19.018(5)(c) for the specific type or types of third-party inspection that said individual may be retained to conduct. The qualifications statement shall include:
1. all relevant professional licenses and certifications that the individual currently holds, including but not limited to:
 - a. Registered professional engineer (PE);
 - b. Registered sanitarian (RS);
 - c. Solid waste operator license(s);
 - d. Solid Waste Association of North America (SWANA) certification(s);
 - e. Licensed site professional (LSP); or
 - f. Asbestos inspector licensure and certification by the Massachusetts Department of Labor Standards;
 2. specific academic degrees that the individual has received;
 3. specific solid waste training that the individual has successfully completed, such as SWANA training or Department waste ban training; and
 4. relevant experience in the solid waste management field.
- (c) Third-Party Inspector Qualifications. An individual may qualify to conduct one or more types of third-party inspection, as follows:
1. General Qualifications. In order to be qualified to conduct any type of third-party inspections pursuant to 310 CMR 19.018, a third-party inspector shall have in-depth knowledge and understanding of solid waste management laws, regulations and requirements applicable to the specific type or types of third-party inspections that said individual may be retained to inspect;
 2. Waste Ban Inspector Qualifications. In order to be qualified to conduct a waste ban inspection at a facility pursuant to 310 CMR 19.018(7), the third-party

inspector shall have successfully completed the Department's waste ban training course and any subsequent training required by the Department.

3. Facility Operation and Maintenance Inspector Qualifications. In order to be qualified to conduct a facility operation and maintenance inspection pursuant to 310 CMR 19.018(6), a third-party inspector shall, at a minimum, have the following combination of credentials, experience and training:
 - a. Credentials.
 - i. be a registered Massachusetts professional engineer in good standing, or a registered Massachusetts sanitarian in good standing, or a Massachusetts licensed site professional in good standing, each of which must have three or more years of full-time professional experience, or part-time equivalent, as set forth below in 19.018(5)(c)3b.; or
 - ii. have a Bachelor's degree in engineering or in a physical or biological science with three or more years of full-time professional experience, or part-time equivalent, as set forth below in 19.018(5)(c)3b.; or
 - iii. have a Bachelor's degree with five or more years of full-time professional experience, or part-time equivalent, as set forth below in 19.018(5)(c)3b.
 - b. Experience. The third-party inspector shall have full-time professional experience, or part-time equivalent experience, of the following type(s) in the solid waste management field:
 - i. managing a solid waste facility;
 - ii. designing or engineering solid waste facilities;
 - iii. inspecting solid waste facilities; or
 - iv. other solid waste experience regarding the operation or management of solid waste facilities.
 - c. Training. The third-party inspector shall have successfully completed any training required by the Department.
4. C&D Waste Processing Facility or C&D Waste Transfer Station Operation and Maintenance Inspector Qualifications. In order to conduct a facility operation and maintenance inspection of a C&D waste processing facility or C&D waste transfer facility, a third-party inspector shall, at a minimum, have all of the credentials, training and experience set forth in 310 CMR 19.018(5)(c)1. and 3. and either shall have an Asbestos Inspector license and classroom certification from the Massachusetts Department of Labor Standards or sub-contract with an individual who has such license and classroom certification, for conducting asbestos-related inspection activities.

(d) List of Registered Third-Party Inspectors.

1. The Department shall create and maintain a list of those individuals who have registered as third-party inspectors.
2. After the first submittal of a qualifications statement by an individual for the purpose of being listed as a third-party inspector pursuant to 310 CMR 19.018(5), the Department may make a written determination, including the reasons therefore, not to list that individual if the Department determines in its sole discretion that the qualifications statement:

- a. is incomplete;
 - b. does not contain information sufficient to demonstrate that the individual meets the minimum qualifications set forth at 310 CMR 19.018(5) to conduct at least one of the types of third-party inspections required therein; or
 - c. contains information that is not true, accurate or otherwise contains false or misleading information.
- (e) Removal from List or Change in Listed Qualification Status.
1. The Department may make a written determination, including the reasons therefore, to remove an individual from the list of third-party inspectors or to change the status of the third-party inspector's qualifications (e.g., to reflect a change in status from qualified for all inspection types to qualified for certain types of third-party inspections), if the Department determines in its sole discretion that the third-party inspector:
 - a. has submitted a qualifications statement that is not true, accurate or otherwise contains false or misleading information;
 - b. has failed to meet one or more of the requirements listed in 310 CMR 19.018(5)(a);
 - c. is no longer qualified to conduct one or more types of third-party inspections;
 - d. has a pattern of conducting inspections that do not meet the regulatory requirements; or
 - e. has a pattern of submitting reports that do not meet the required standards.
 2. Any determination by the Department pursuant to this subsection shall be in writing and shall state the reason(s) for removing the individual from the list of third-party inspectors or changing the status of the individual's qualifications.
 3. A third-party inspector may at any time notify the Department that he or she wants to be removed from the list of registered third-party inspectors or change his or her status.
- (f) Reconsideration and Appeal Rights.
1. Any individual who is omitted or removed from the list of registered third-party inspectors by the Department, or whose status on the list the Department has changed, may submit a written request to the Department for reconsideration of its determination. Said request shall be postmarked within 21 days of the issuance of the Department's determination. The Department may request a meeting with the individual. The Department shall respond in writing to the reconsideration request and shall state the reasons for omitting or removing the individual. Such determination on the request for reconsideration shall not become effective until 22 days after issuance or after issuance of a final decision in an adjudicatory hearing, whichever is later. Failure to submit a written request for reconsideration in a timely manner shall be deemed to be a waiver of the individual's right to request an adjudicatory hearing.
 2. Any individual who receives a determination on reconsideration pursuant to 310 CMR 19.018(5)(f)1. has the right to request an adjudicatory hearing from the Department. Any such individual shall be deemed to have waived such right unless the individual delivers, within 21 days of the date of issuance of the Department's written determination on reconsideration, a request for an adjudicatory hearing that complies with the requirements of 310 CMR 1.01. Any

individual who is aggrieved by a final decision in an adjudicatory hearing regarding a determination on reconsideration issued pursuant to 310 CMR 19.018(5)(f)1. may obtain judicial review thereof in accordance with the provisions of M.G.L. c. 30A, §14.

(6) Performance Standards for a Third-Party Facility Operation and Maintenance Inspection.

(a) General performance standards.

1. During a facility operation and maintenance inspection, a third-party inspector shall assess a facility's operation and maintenance practices and procedures to determine whether the facility is in compliance with all applicable requirements, including, but not limited to, requirements set forth in:
 - a. 310 CMR 19.000;
 - b. the facility's operation and maintenance plan;
 - c. orders or other enforcement documents issued to the facility; and
 - d. other solid waste permits, approvals, determinations and authorizations issued to the facility by the Department.
2. Prior to conducting a third-party facility operation and maintenance inspection, the third-party inspector shall identify and review all solid waste requirements applicable to the operation and maintenance of the facility, including but not limited to those requirements identified in 310 CMR 19.018(6)(a)1.
3. During each third-party inspection, in order to complete an assessment of the facility's compliance with all applicable requirements as set forth in 310 CMR 19.018(6)(a)1., the third-party inspector shall examine and evaluate the facility's solid waste activities, equipment, operations, practices, procedures, and records relevant to the type of third-party inspection being conducted, including without limitation:
 - a. the status and condition of operating and monitoring equipment, structures, appurtenances and devices related to the solid waste activities carried out at the facility;
 - b. each operational aspect of the facility related to solid waste handling, processing, recycling, storage and disposal, including but not limited to:
 - i. vehicle weighing and recording of scale data;
 - ii. tipping areas and the unloading of incoming materials;
 - iii. inspection and handling of incoming and outgoing waste, recyclable materials and other materials regulated by the Department; and
 - iv. types and quantities of waste and materials received or stored at the facility;
 - c. status of all facility record-keeping required by:
 - i. 310 CMR 19.000;
 - ii. the facility's operation and maintenance plan;
 - iii. orders or other enforcement documents issued to the facility; and
 - iv. other solid waste permits, approvals, determinations and authorizations issued to the facility by the Department;
 - v. provided that the owner and operator may deny the third-party inspector access only to confidential or proprietary business information;
 - d. material or waste handling areas and equipment including storage areas for recyclable materials, waste or residue; and

- e. the condition of the facility, including evidence of dust, litter, odors, and other nuisance conditions, security measures such as fencing and gates, properly marked and maintained access roads, storm water management controls and any leachate management system(s) .
- 4. Where a third-party inspector observes that the operation or maintenance of the facility deviates from the aforementioned applicable requirements, he or she shall document all such deviations and recommend corrective actions for the facility to take to return to compliance with such requirements.
- 5. Third-party inspections shall be unannounced and randomly timed during the facility's normal operating hours, as follows:
 - a. Inspection days shall be determined randomly from among the planned operating days of the facility during the inspection period specified in 310 CMR 19.018(6)(b).
 - b. The third-party inspector shall keep the selected dates of third-party inspections confidential and shall not notify the owner or operator, or any employee or individual affiliated with or related to the owner or operator, of such dates prior to arriving at the facility to conduct a third-party inspection.
 - c. The third-party inspector shall postpone any inspection for which the owner or operator or any of his or her employees learns of the date of inspection in advance.
- (b) Frequency. The owner and operator of a facility shall ensure that a third-party inspector conducts a facility operation and maintenance inspection in accordance with the following frequency and time intervals:
 - 1. at an active landfill at least once in every two-month period, with at least 20 days between consecutive inspections;
 - 2. at a closed landfill at least once every two calendar years, with at least six months between consecutive inspections;
 - 3. at a handling facility, other than a C&D waste processing facility or C&D waste transfer station;
 - a. At a facility permitted to accept less than 50 tons per day at least once every calendar year, with at least four months between consecutive inspections; and
 - b. At a facility permitted to accept 50 tons or more per day at least twice every calendar year, with at least two months between consecutive inspections;
 - 4. at a C&D waste processing facility or a C&D waste transfer station at least once in each quarter (three-month period), with at least 20 days between consecutive inspections; and
 - 5. at a combustion facility at least once in each quarter (three-month period), with at least 20 days between consecutive inspections.
- (c) Additional Performance Standards for a Third-Party Facility Operation and Maintenance Inspection of an Active Landfill.
 - 1. In addition to complying with the general performance standards set forth in 310 CMR 19.018(6)(a), a third-party inspector shall examine and evaluate an active landfill's compliance with:

- a. the operation and maintenance requirements set forth at 310 CMR 19.130 and 310 CMR 19.131, as applicable;
 - b. the environmental monitoring requirements (including, but not limited to, reporting frequencies) set forth at 310 CMR 19.132;
 - c. the requirements for maintenance of environmental control and monitoring systems set forth at 310 CMR 19.133;
 - d. the landfill gas recovery facility operation and maintenance requirements set forth at 310 CMR 19.121, if applicable;
- and
- f. the applicable requirements of any beneficial use determination(s) governing the beneficial use of solid waste at the facility.

(d) Additional Performance Standards for a Third-Party Facility Operation and Maintenance Inspection of a Closed Landfill.

- 1. In addition to complying with the general performance standards described in 310 CMR 19.018(6)(a), a third-party inspector shall examine and evaluate a closed landfill's compliance with:
 - a. the landfill post-closure requirements set forth at 310 CMR 19.142;
 - b. the conditions set forth in the facility's closure permit(s);
 - c. the conditions of any post-closure use permit(s); and
 - d. the requirements set forth at 310 CMR 19.016 and 310 CMR 19.143, as applicable, governing post-closure use activities.

(e) Additional Performance Standards for a Third-Party Facility Operation and Maintenance Inspection of a Handling Facility, Except for a C&D Waste Processing Facility or a C&D Waste Transfer Station.

- 1. The performance standards in this section apply to a handling facility that is not a C&D waste processing facility or a C&D waste transfer station, which are addressed in 310 CMR 19.018(6)(f).
- 2. In addition to complying with the general performance standards described in 310 CMR 19.018(6)(a), a third-party inspector shall examine and evaluate the compliance of a handling facility with:
 - a. the requirements for stormwater controls, equipment and weighing facilities set forth at 310 CMR 19.205;
 - b. the operation and maintenance requirements set forth at 310 CMR 19.207;
 - d. the applicable requirements of any beneficial use determination(s) governing the beneficial use of solid waste at the facility.

(f) Additional Performance Standards for a Third-Party Facility Operation and Maintenance Inspection of a C&D Waste Processing Facility or a C&D Waste Transfer Station.

- 1. The performance standards in this section only apply to a C&D waste processing facility or a C&D waste transfer station. They do not apply to other types of handling facilities, which are addressed in 310 CMR 19.018(6)(e).

2. In addition to complying with the general performance standards described in 310 CMR 19.018(6)(a), a third-party inspector shall examine and evaluate the compliance of a C&D waste processing facility or a C&D waste transfer station with:
 - a. the requirements for stormwater controls, equipment and weighing facilities set forth at 310 CMR 19.205;
 - b. the operation and maintenance requirements set forth at 310 CMR 19.206, if applicable, and 310 CMR 19.207;
 - c. the facility's suspect asbestos-containing material (ACM) inspection and management protocol; and
 - d. the applicable requirements of any beneficial use determination(s) governing the beneficial use of solid waste at the facility.
 3. The third-party inspector shall observe random incoming waste loads and collect ACM samples from suspect materials and send those sample(s) for analysis in accordance with the facility's approved ACM inspection and management protocol, if any.
 - 4.
 - (g) Additional Performance Standards for a Third-Party Facility Operation and Maintenance Inspection of a Combustion Facility.
 1. In addition to complying with the general performance standards described in 310 CMR 19.018(6)(a), a third-party inspector shall examine and evaluate the compliance of a combustion facility with:
 - a. the operation and maintenance requirements set forth at 310 CMR 19.207;
 - b. the ash handling and disposal conditions set forth in the combustion facility's permit and its operation and maintenance plan;
 and
 - c. the applicable requirements of any beneficial use determination(s) governing the beneficial use of solid waste at the facility.
- (7) Performance Standards for a Third-Party Waste Ban Inspection.
- (a) General. The owner and operator of a facility that has an approved waste ban compliance plan pursuant to 310 CMR 19.017 shall have the facility inspected by a qualified third-party waste ban inspector to assess compliance with the waste bans at 310 CMR 19.017 by the facility and by the haulers and generators delivering waste to the facility.
 - (b) Exemptions.
 1. An owner and operator of a handling facility that does not accept loads greater than five cubic yards is exempt from 310 CMR 19.018(7); and
 2. An owner and operator of a facility that participates in the Class II Recycling Program in accordance with the terms of 310 CMR 19.300 is exempt from 310 CMR 19.018(7).
 - (c) Performance Standards.
 1. Prior to conducting each third-party waste ban inspection, the third-party inspector shall identify and review all requirements applicable to waste ban

- compliance at the facility, including but not limited to, the facility waste ban compliance plan and the requirements of 310 CMR 19.017.
2. During an inspection and for the minimum number of loads as required pursuant to 310 CMR 19.018(7)(e), a third-party inspector shall examine and evaluate the compliance of the facility with its approved waste ban compliance plan, as follows:
 - a. Visually monitor all incoming loads received at the facility during the waste ban inspection;
 - b. Identify all failed loads received during the waste ban inspection;
 - c. Record all identified failed loads using photographs, weigh slips, and standardized waste tracking forms provided by the Department. Such forms may include, but are not limited to, hauler and generator information (to the extent known) and the percentage of the load that is comprised of waste ban material(s); and
 - d. Conduct a comparative analysis of the percentage of failed loads identified by the third-party inspector with the percentage of failed loads documented pursuant to the facility's on-going load inspections conducted over the immediately preceding inspection period.
 3. Third-party waste ban inspections shall be unannounced and randomly timed during the facility's normal operating hours, as follows:
 - a. Inspection days shall be selected in accordance with 310 CMR 19.018(7)(d).
 - b. The third-party inspector shall keep the selected dates of third-party inspections confidential and not notify the owner or operator, or any employee or individual affiliated with or related to the owner or operator, of such dates prior to arriving at the facility to conduct a third-party inspection.
 4. Where a third-party inspector observes that waste ban compliance at the facility deviates from the applicable requirements set forth at 310 CMR 19.018(7)(c)1., the third-party inspector shall document all such deviations and recommend corrective actions for the facility to take to return to compliance with such requirements. (d) Frequency. The owner and operator of a facility shall ensure that a third-party inspector conducts a waste ban inspection in accordance with the following frequency and time intervals:
 1. at an active solid waste landfill: at least once in every two-month period, with at least 20 days between consecutive inspections;
 2. at all handling facilities other than C&D processing facilities:
 - a. at a facility permitted to accept less than 50 tons of waste per day, at least once every calendar year, with at least four months between consecutive inspections;
 - b. at a facility permitted to accept 50 tons or more of waste per day, at least twice every calendar year, with at least two months between consecutive inspections;
 3. at a C&D processing facility or a C&D transfer station at least once in each quarter (three-month period), with at least 20 days between consecutive inspections;
 4. at a combustion facility: at least once in each quarter (three-month period), with each such inspection at least 20 days between consecutive inspections.

(e) Minimum Loads.

1. Once the third-party inspector begins a waste ban inspection, the third-party inspector shall observe and document each and every load, until the following minimum number of loads, containing at least five cubic yards of material each, have been observed:
 - a. For a facility permitted to accept from 1 to 99 tons of waste per day, four vehicle loads;
 - b. For a facility permitted to accept greater than 99 but less than or equal to 299 tons per day, eight vehicle loads;
 - c. For a facility permitted to accept greater than 299 but less than or equal to 499 tons per day, 12 vehicle loads;
 - d. For a facility permitted to accept greater than 499 but less than or equal to 999 tons per day, 16 vehicle loads; or
 - e. For a facility permitted to accept more than 999 tons per day, 20 vehicle loads.
2. As an alternative to the minimum loads set forth at 310 CMR 19.018(7)(e)1., for a facility that has operated below the facility's permitted capacity for the previous year, the third-party inspector may apply the average actual daily receipt of waste (in tons) over the preceding year (instead of the permitted tonnage amount) to the minimum load criteria set forth above at 310 CMR 19.018(7)(e)1.

(8) Third-Party Inspection Reports, Record-keeping Requirements and Procedures.

(a) Third-Party Inspector Report Submittal and Certification Requirements.

A third-party inspector who has performed a third-party inspection pursuant to 310 CMR 19.018 shall:

1. prepare an accurate and complete third-party inspection report which presents the results of his or her inspection in accordance with the performance standards set forth at 310 CMR 19.018(6) and (7) and which meets the requirements set forth at 310 CMR 19.018(8)(b) ;
2. sign and certify his or her inspection report on a form or forms provided by the Department; include the following statements in the report:
 - I, [name of third-party inspector], attest under the pains and penalties of perjury that:
 - (a) I have personally examined and am familiar with the information contained in this submittal, including any and all documents accompanying this certification statement;
 - (b) based on my inquiry of those persons responsible for obtaining the information, the information contained in this submittal is, to the best of my knowledge, true, accurate, and complete;
 - (c) have been able to conduct the third-party inspection and prepare the third-party inspection report without being influenced by the facility owner or operator and, [if the third-party inspector is a municipal employee,] by his or her municipal employer, by any co-worker or by any elected or appointed official of the municipality; and
 - (d) I am aware that there are significant penalties, including, but not limited to, possible administrative and civil penalties for submitting false, inaccurate, or incomplete information and possible fines and

imprisonment for knowingly submitting false, inaccurate, or incomplete information; and

3. submit to the owner and operator such third-party inspection report.

(b) Third-Party Inspector Report Content Requirements.

1. Facility Operation and Maintenance Inspection Report. For each facility operation and maintenance inspection, the third-party inspector shall prepare a third-party inspection report that describes and reports in detail the results of his or her inspection of the facility's compliance with all applicable requirements, including, but not limited to:
 - a. any deviation from compliance with the operation and maintenance requirements contained in the applicable requirements set forth at 310 CMR 19.018(6) through (7);
 - b. the status and condition of operating and monitoring equipment, structures, appurtenances and devices;
 - c. the status and condition of each operational aspect of the facility, including but not limited to, waste handling, processing, recycling, storage and disposal of waste and materials;
 - d. a summary of all waste and materials received by and handled at the facility, including all loads identified and rejected during the applicable inspection period specified at 310 CMR 19.018(6)(b) or 310 CMR 19.018(7)(d);
 - e. the status of the facility's compliance with applicable record-keeping requirements;
 - f. the estimated volumes of all materials and wastes stored at the facility at the time of the inspection;
 - g. the analytical results of all sample(s) collected by the third-party inspector during the inspection, including chain of custody documentation (e.g., for suspect ACM sampling at C&D waste processing facilities);
 - h. the condition of the facility, including but not limited to evidence of dust, litter, odors, and other nuisance conditions, security measures such as fencing and gates, properly marked and maintained access roads, and storm water management controls and leachate management systems;
 - i. any corrective action(s) proposed by the third-party inspector to be taken by the owner or operator, with recommended schedules for implementing the corrective action(s); and
 - j. any additional information as required by the Department on a facility-specific basis.
2. Waste Ban Compliance Inspection Report. For a waste ban compliance inspection conducted pursuant to 310 CMR 19.018(7), the third-party inspector shall prepare a third-party inspection report that describes and reports in detail the results of his or her inspection, including but not limited to:
 - a. any deviation from compliance with the waste bans at 310 CMR 19.017 by the facility or haulers and generators delivering waste to the facility; and
 - b. a comparative analysis of the percentage of failed loads identified by the third-party inspector and the percentage of failed loads documented pursuant to the on-going load inspections conducted over the immediately preceding

inspection period in accordance with the facility's approved waste ban compliance plan.

4. Report Format. Each third-party inspection report shall be submitted in the format specified by the Department.
5. Duty of Third-Party Inspectors to Provide Information. Upon request of the Department, a third-party inspector shall provide a copy of any third-party inspection report prepared by him or her to the Department within seven business days. Upon request, a third-party inspector shall furnish any other information, documents or records associated with such inspection and allow the Department access to and to copy all records relating to the facility within seven business days.

(c) Owner and Operator Requirements.

1. Reports and Certifications. The owner and operator of a facility shall submit each third-party inspection report to the Department and the board of health of the municipality in which the facility is located no later than 30 days following the date of the inspection. A responsible official of the inspected facility shall sign and certify such report in accordance with 310 CMR 19.011(1). Notwithstanding the foregoing, nothing in this section 310 CMR 19.018 relieves any person of any duty to report or provide notice of any information that such person is required to report in a shorter timeframe pursuant to any statute, regulation, permit, approval, determination, authorization, order or other requirement.
2. Corrective Actions. In the event that a third-party inspection report contains a recommendation for corrective action(s), the owner or operator shall submit, along with the inspection report, the following:
 - a. a written report documenting the completion of the corrective action(s);
 - b. documentation or explanation why corrective action is not needed; or
 - c. a plan and schedule for completing the corrective action(s), on a form provided by the Department. The owner or operator may elect to correct deviations identified in the third-party inspection report in a manner that is different than that recommended by the third-party inspector, so long as the facility is brought back into compliance with applicable requirements.
3. Deficiency Notice. In the event that the Department issues a written deficiency notice to the owner or operator regarding any submittal required by 310 CMR 19.018, the owner or operator shall, within 21 days of the date of issuance of the Department's notice, provide a written response to the Department that describes how the facility intends to correct the deficiencies identified by the Department and provides a compliance schedule.
4. Records. A copy of each third-party inspection report shall be maintained at the facility in accordance with the record-keeping requirements of 310 CMR 19.000. The owner and operator shall make third-party inspection reports available to personnel or authorized representatives of the Department for review at the facility upon request.

19.028: Requirements for Construction, Operation, Modification or Expansion of a Solid Waste Management Facility. No person shall construct, operate, maintain, expand or modify a facility to store, process, transfer, treat or dispose of solid waste except in accordance with:

- (1) a valid site assignment;
- (2) a solid waste management facility permit ("permit") and any applicable facility expansion permit issued in accordance with 310 CMR 19.032;
- (3) an authorization to construct the facility issued by the Department in accordance with 310 CMR 19.041;
- (4) an authorization to operate the facility issued by the Department in accordance with 310 CMR 19.042 or, for a transfer station which is not a C&D waste transfer station, a certification in accordance with 310 CMR 19.035; and
- (5) any applicable modification permit pursuant to 310 CMR 19.033 or 310 CMR 19.034.

19.029: Applicable Permit and Certification Procedures for Construction, Operation, Modification or Expansion of a Solid Waste Management Facility.

(1) Use of Permit Procedure at 310 CMR 19.032. The permit procedure set forth at 310 CMR 19.032 shall be used to review the following:

- (a) an application for a new facility;
- (b) an application for expansion of a handling facility, including a transfer station;
- (c) an application for expansion of a combustion facility;
- (d) an application for lateral expansion of a landfill;
- (e) an application for vertical expansion of a landfill; or
- (f) any other application the Department deems appropriate.

(2) Use of Permit Procedure at 310 CMR 19.033. Except as specified at 310 CMR 19.029(3), or 19.029(4) the permit procedure set forth at 310 CMR 19.033 shall be used to review the following:

- (a) an application for a permit modification;
- (b) an application for corrective action (including but not limited to assessment);
- (c) a closure plan;
- (d) a post-closure plan;
- (e) an application for post-closure use on the final cover of a landfill or affecting an appurtenance of a facility;
- (f) an application for a Beneficial Use Determination; or
- (g) any other application the Department deems appropriate.

(3) Use of Presumptive Approval Procedure at 310 CMR 19.034. Except as specified at 310 CMR 19.029(2) and 19.029(4), the presumptive approval procedure set forth at 310 CMR 19.034 shall apply to the following proposed activities or modifications:

- (a) any administrative change at a facility;
- (b) a post-closure use that:
 1. does not affect the facility's appurtenances, or
 2. is not located on the final cover of a landfill;
- (c) acceptance of a special waste pursuant to 310 CMR 19.061;

- (d) a minor operational or equipment change, such as, but not limited to, a change, substitution, or addition of processing equipment(e.g. diesel to electric) or a change in the facility's layout; and
 - (e) any other activity or modification the Department deems appropriate.
- (4) Use of Certification Procedure at 310 CMR 19.035 for a Transfer Station (that is not a C&D Waste Transfer Station). The certification procedure at 310 CMR 19.035 shall be used for:
- (a) the operation of a new or expanded transfer station;
 - (b) the acquisition of a transfer station (in addition to the certification required pursuant to 310 CMR 19.044);
 - (c) the modification in the design, construction, operation, maintenance, closure, or post-closure use of a transfer station;
 - (d) when a certification has not been submitted within the previous five years; or,
 - (e) for a transfer station with a valid permit or approval issued prior to [the effective date of these regulations].

19.030: Application for a Solid Waste Management Facility Permit

(1) General. Any person intending to construct, operate or maintain a solid waste management facility shall file an application for a permit.

(2) Application. An application for a permit shall contain sufficient information so that the Department can evaluate whether the application meets the applicable review criteria at 310 CMR 19.038 and at a minimum shall include:

- (a) a completed application on a form as may be provided by the Department;
- (b) such additional or alternative information as required in other parts of 310 CMR 19.000 governing the permitting of specific types of solid waste management facilities;
- (c) applicant identification which shall include such information and documentation as the Department deems necessary to fully identify all persons having a legal or financial interest in, or operational responsibility for, the site or facility; those persons' legal status; those persons' prior ownership or operating history of solid waste facilities; and other relevant information regarding the applicant's competency to own and/or operate a facility;
- (d) a solid waste management facility plan ("Plan") for the particular type of solid waste management facility that includes such maps, data, information and documents as required in the applicable facility specific regulations. The Plan shall, at a minimum, be comprised of the following components:

[Revise 19.030(3)(d) through (g) to be (e) through (h) and renumber 19.030(4), (5) and (6) to be 19.030(3), (4) and (5).]

(6) Signatory. An application shall be signed and certified in accordance with 310 CMR 19.011(1).

(7) Engineering Supervision. All papers pertaining to design, construction, operation, maintenance, or engineering of a site or a facility shall bear the seal and signature of a

Massachusetts registered supervising engineer or other applicable person as required at 310 CMR 19.011(2).

19.032: Permit Procedure for a New Facility or Expansion Permit Application.

(1) General. This section describes the permit procedure for a permit application for a new facility, an expansion of an existing facility, or for any other application the Department deems appropriate as specified in 310 CMR 19.029(1).

(2) Draft Decision.

(a) The Department shall prepare a draft decision. A draft decision for granting a permit shall include all appropriate conditions, standards, and requirements necessary to establish a new facility or to conduct approved activities at an existing facility.

(b) Each draft decision shall be accompanied by a fact sheet briefly describing:

1. the facility or activity which is the subject of the draft decision;
2. the type and quantity of wastes which are to be handled;
3. the reasons for the terms and conditions set forth therein; and
4. the reasons why requested variances or alternatives to required standards are or are not proposed to be approved.

(c) Distribution of the Draft Decision. The Department shall send a copy of the draft decision and the accompanying fact sheet to the applicant, the local board of health, abutting board of health, if any, and, on written request, to any other person.

(d) Description of Procedures. A description of the procedures for reaching a final decision on the permit application shall accompany the copy of the draft decision and shall include:

1. the beginning and ending dates of the comment period and the address where comments will be received;
2. any other procedures by which the public may participate in the process leading to a final permit decision; and
3. the name and telephone number of an individual to contact for additional information.

(3) Public Notice.

(a) The Department shall cause public notice to be given when:

1. a draft decision on a facility permit application has been prepared; or
2. a public hearing on a draft decision has been scheduled. Public notice in this case shall be given at least 21 days prior to the hearing date.

(b) Notice of More Than One Permit. A public notice may describe more than one permit or permit action.

(c) Method of Notice. Public notice shall be given by the following methods:

1. By mailing notice to:
 - a. the applicant;
 - b. the board of health of the municipality in which the facility is to be located or the permitted activity is proposed;
 - c. the board of health of any municipality within ½ mile of the proposed facility (“abutting board of health”); and
 - d. abutters of the facility site.

2. By publication, paid for by the applicant, in a daily or weekly newspaper of general circulation in the locality affected by the facility.

(d) Content of Notice. A public notice shall, at a minimum, contain the following information:

1. a description of the proposed facility including the type of facility, proposed tonnage, location and hours of operation;
2. the identity and mailing address of the applicant;
3. the public location where the application can be inspected; and
4. the time period for written comments on the application and the address to which comments should be mailed, and, if a public hearing is to be held, the public hearing information set forth at 310 CMR 19.032(5).

(4) Comment Period.

(a) A public notice issued pursuant to 310 CMR 19.032(3) for a draft decision shall allow at least 30 days for public comment. The comment period shall begin on the date the public notice is first published in a newspaper as specified at 310 CMR 19.032(3)(c)2. or on a later date specified in the public notice.

(b) Written Comments. During the public comment period, any interested person may submit written comments on the draft decision to the office of the Department processing the permit request.

(c) Extending or Reopening the Public Comment Period. The Department may extend or reopen the public comment period to allow for the issuance of a modified draft decision or to give interested persons an opportunity to comment on the information or arguments submitted. If the Department gives such an extension, public notice thereof shall be given in the manner prescribed in 310 CMR 19.032(3). Such notice shall specify any new issues to be considered.

(5) Public Hearing.

(a) Circumstances Requiring Hearing. The Department shall schedule a public hearing within the municipality wherein the proposed facility is to be located when:

1. the applicant requests a public hearing;
2. the Commissioner determines that there is sufficient public interest in unresolved issues of concern; or
3. the Department prepares a modified draft decision with substantial revisions from the original draft decision as a result of comments received pursuant to 310 CMR 19.032(4). Copies of the modified draft decision shall be distributed in accordance with 310 CMR 19.032(2)(c).

(b) Content of Public Hearing Notice. Public notice of the public hearing shall be given in the manner described in 310 CMR 19.032(3) and shall include:

1. the date, time, and place of the public hearing; and
2. the nature and purpose of the public hearing.

(c) Public Hearing Procedures.

1. Hearing Officer. The Department shall designate a representative to conduct the public hearing. The Hearing Officer shall have authority to ensure an orderly presentation of issues, comments, data, and arguments, and to ensure an adequate

and comprehensible record of the proceedings. The Hearing Officer may, at his or her discretion, without limitation of the foregoing:

- a. define relevant issues, receive and consider relevant matter and exclude irrelevant or unduly repetitive matter;
- b. determine the order in which persons wishing to do so may present oral comments;
- c. conduct appropriate examination of persons offering oral comments;
- d. establish a reasonable time limit for all persons wishing to offer oral comments;
- e. require the applicant or any other person intending to present studies or exhibits for consideration at the hearing to file such material within a reasonable time in advance of the hearing;
- f. require any person who refers to or relies upon written information or expert opinion in offering comments to provide copies of such material within a reasonable time after the hearing;
- g. permit an opportunity for oral rebuttal of comments received;
- h. allow a reasonable time after the hearing for providing written comment or rebuttal; and
- i. order adjournment, recess, or rescheduling of the hearing.

2. Participation in the Hearing. Any person may attend and observe the public hearing. Any person wishing to offer oral comments may do so upon filing a written statement containing the name, address, and telephone number of an authorized representative to whom correspondence may be addressed for purposes of the hearing.

3. Authorized Representative. An individual may appear on his or her own behalf. A duly authorized officer or employee may represent a corporation; a duly authorized member may represent a partnership, joint venture or association; and an authorized trustee may represent a trust. Any person shall have the right to be accompanied, represented and advised by an authorized agent or attorney.

4. Conduct of Hearing. The hearing shall be as informal as may be reasonable and appropriate under the circumstances. The Hearing Officer shall ensure that the conduct of persons at the hearing will at all times be orderly.

5. Withdrawal of Request for Hearing. The applicant or any other person who requested a hearing may withdraw the request, or may elect to submit any comments or documents without a hearing, by filing with the Department a written withdrawal. If notice of a hearing has already been published pursuant to 310 CMR 19.032(3), such withdrawal shall be filed at least ten days prior to the scheduled hearing, and notice of the withdrawal shall be provided in the same manner specified in 310 CMR 19.032(3).

6. Recordings and Transcripts. The proceedings at the hearing shall be recorded either electronically or stenographically. Transcripts or electronic copies shall be supplied to any person, upon request, at his or her own expense. Any person, upon request, may order a stenographer to transcribe the proceedings or the Department's electronic recording at his or her own expense. In such event, a transcription shall be provided to the Department at no expense to the Department, and upon such other terms as the Hearing Officer shall order.

(6) Issuance of the Final Decision on a Permit Application.

(a) Issuance and Public Notice. After the close of the public comment period, or, if applicable, the close of the public hearing, whichever is later, the Department shall issue a final decision on the permit application. Notice of the Department's final decision and summary response to comments shall be given to the applicant by electronic transmission upon agreement by the applicant, or, if not, by first class mail. Notice shall also be provided to the board of health, any abutting board of health and each person who has requested notice of the final decision.

(b) Effective Date. Unless otherwise stated in the permit, the permit shall be effective upon issuance.

(c) Summary Response to Comments. At the time the decision is issued, the Department shall prepare a summary of the major comments on the draft decision and a response to comments and shall describe any major changes made to the draft decision as a result of comments received.

(d) Legal Challenges.

1. Appeal. Any person aggrieved by the final permit decision may file an appeal for judicial review of said decision in accordance with the provisions of M.G.L. c. 111, § 150A and c. 30A no later than 30 days following the date of issuance of the final permit decision to the applicant. The standing of a person to file an appeal and the procedures for filing such appeal shall be governed by the provisions of M.G.L. c. 30A. Unless the person requesting an appeal requests and is granted a stay of the terms and conditions of the final permit decision by a court of competent jurisdiction, the final permit decision shall be effective in accordance with 310 CMR 19.032(6)(b).

2. Notice of Action. Any aggrieved person intending to appeal a final permit decision to the Superior Court shall first provide notice of intention to commence such action. Said notices of intention shall include the Department file number and shall identify with particularity the issues and reason why it is believed the final permit decision was not proper. Such notice shall be provided to the Office of General Counsel of the Department and the Regional Director for the regional office which processed the permit application, if applicable, at least five days prior to the filing of an appeal.

3. No allegation shall be made in any judicial appeal of a final permit decision unless the matter complained of was raised at the appropriate point in the administrative review procedures established in 310 CMR 19.000, provided that a matter may be raised upon a showing that it is material and that it was not reasonably possible with due diligence to have been raised during such procedures or that matter sought to be raised is of critical importance to the environmental impact of the permitted activity.

19.033: Permit Procedure for an Application for a Permit Modification or Other Approval.

(1) General. This section describes the permit procedure for a permit application for certain modifications to a facility or other permit application as specified in 310 CMR 19.029(2)

(2) Issuance of Permit Decision. The Department shall mail a copy of its permit decision on an application to the applicant, the board of health of the municipality in which the facility is located, the board of health of any municipality within ½ mile of the proposed facility and any other person who has requested in writing that the Department provide a copy of the permit decision.

(3) Effective Date. Unless otherwise stated in the permit decision, the permit decision shall be effective upon its issuance.

(4) Review of Decision.

(a) Provisional Decision. The Department may defer the effective date of a permit decision for the purpose of obtaining comments by issuing a provisional permit decision. Such a provisional decision shall be accompanied by a notice stating that written comments may be submitted to the Department for a period of at least 21 days after the date of issuance of the provisional decision. Prior to the effective date established therein, the Department shall issue a final permit decision at the end of the comment period.

(b) Where no provisional decision is issued, an applicant aggrieved by the Department's permit decision, within 21 days of the issuance of the Department's permit decision to the applicant, may file a written request, with the appropriate regional office of the Department, that the permit decision be deemed a provisional decision, and a written statement of the basis on which the applicant believes it is aggrieved, together with any supporting materials. Upon timely filing of such a request, the permit decision shall be deemed a provisional decision. Such a request shall reopen the administrative record, and the Department shall issue a final permit decision after the end of the comment period. Failure by an applicant to exercise the right provided in 310 CMR 19.033(4)(b) shall constitute a waiver of the applicant's right to appeal.

(6) Legal Challenges.

(a) Appeal. Any person aggrieved by the final permit decision, except as provided for under 310 CMR 19.033(4)(b), may file an appeal for judicial review of said permit decision in accordance with the provisions of M.G.L. c. 111, § 150A and M.G.L. c. 30A no later than 30 days following the date of issuance of the final permit decision to the applicant. The standing of a person to file an appeal and the procedures for filing such appeal shall be governed by the provisions of M.G.L. c. 30A. Unless the person requesting an appeal requests and is granted a stay of the terms and conditions of the final permit decision by a court of competent jurisdiction, the final permit decision shall be effective in accordance with 310 CMR 19.033(3).

(b) Notice of Action. Any aggrieved person intending to appeal a final permit decision to the Superior Court shall first provide notice of intention to commence such action. Said notice of intention shall include the Department file number and shall identify with particularity the issues and reason why it is believed the final permit decision was not proper. Such notice shall be provided to the Office of General Counsel of the Department and the Regional Director for the regional office which processed the permit application, if applicable, at least five days prior to the filing of an appeal.

(c) No allegation shall be made in any judicial appeal of a final permit decision unless the matter complained of was raised at the appropriate point in the administrative review

procedures established in 310 CMR 19.000, provided that a matter may be raised upon a showing that it is material and that it was not reasonably possible with due diligence to have been raised during such procedures or that matter sought to be raised is of critical importance to the environmental impact of the permitted activity.

19.034 Presumptive Approval Procedure.

This section describes the procedure for the Department's presumptive approval of certain activities at or modifications to a facility. Any activity or modification specified in 310 CMR 19.029(3) may be made without prior written approval from the Department provided that:

- (1) at least 45 days prior to commencing such activity or modification, the owner or operator submits to the Department and the board of health a written description of the proposed activity or modification on an application form provided by the Department;
- (2) within 45 days of receipt of the form, the Department has not determined, in a letter to the owner and operator, that 310 CMR 19.034 does not apply to the proposed activity or modification or that additional information is needed to make that determination; and
- (3) within 45 days of completion of the modification, the owner or operator submits to the Department as-built plans and/or a report describing the modification, provided that no additional documentation is necessary where there was no physical modification to the facility.

19.035: Transfer Station Certification Procedure.

- (1) Qualifications for Transfer Station Certification. To be eligible to submit a transfer station certification, a transfer station must have a valid facility permit. Any expiration date contained in the transfer station permit shall have no force and effect after the owner or operator of the transfer station submits a valid certification pursuant to 310 CMR 19.035.
- (2) Certification Filing Schedule. The responsible official for a transfer station that is not a C&D waste transfer station shall submit a certification to the Department in accordance with 310 CMR 19.035 by the earliest of the following applicable deadlines:
 - (a) 30 days prior to the operation of a new transfer station;
 - (b) 30 days prior to the operation of a transfer station in accordance with its permit for an expansion;
 - (c) 30 days prior to a modification in the design, construction, operation, maintenance, closure, or post-closure use of the transfer station;
 - (d) when a certification has not been submitted within the previous five years;
 - (e) 30 days after the acquisition of a transfer station; or
 - (f) 120days after **[the effective date of these regulations]** for operation of a transfer station with a valid permit or approval issued prior to **[the effective date of these regulations]** that does not have a certification.
- (3) Form. The certification shall be submitted on a form supplied by the Department. The certification shall address compliance with the permit(s) issued to the transfer station, the applicable requirements of 310 CMR 19.000, including but not limited to the review criteria at 310 CMR 19.038(2)(a)1. through 11., and shall include all

information regarding any changes at the transfer station relating to the design, construction, operation, maintenance, closure and post-closure use of the transfer station since the last certification was submitted.

- (4) Certification Statement. The responsible official for the transfer station shall submit a certification in accordance with 310 CMR 19.011(1).

19.036: Department's Modification, Suspension or Revocation of a Permit

(1) General. The Department may rescind, suspend, or modify a permit when it determines that the operation or maintenance of a facility results in a threat to the public health, safety or the environment in accordance with the provisions of M.G.L. c.111, § 150A and after a hearing in accordance with M.G.L. c.30A, § 11.

(2) Scope of Determination of Threat. In considering whether the continued operation of a facility presents a threat to the public health and safety or the environment the Department may consider:

- (a) the likelihood of a discharge or release of pollutants from the facility;
- (b) the actual or potential impacts from a discharge or release of pollutants from the facility; or
- (c) the potential adverse impacts on the Commonwealth's natural resources from the disposal of restricted materials pursuant to 310 CMR 19.017.

19.038: Review Criteria for a New or Expanded Facility Permit or Permit Modification.

(1) Applicability of Permitting Criteria. The criteria the Department shall apply when reviewing a permit application or an application for a permit modification are as follows:

- (a) New or Expanding Landfill. A permit application for a new landfill or landfill expansion submitted pursuant to 310 CMR 19.032 shall comply with the criteria set forth at 310 CMR 19.038(2)(a), (c) and (d).
- (b) New or Expanding Combustion Facility. A permit application for a new or expanding combustion facility submitted pursuant to 310 CMR 19.032 shall comply with the criteria set forth at 310 CMR 19.038(2)(a) and (b).
- (c) New or Expanding Handling Facility. A permit application for a new or expanding handling facility submitted pursuant to 310 CMR 19.032 shall comply with the criteria set forth at 310 CMR 19.038(2)(a)1. through 11., 13. and 14., and (b).
- (d) Modification of a Landfill, Combustion Facility or Handling Facility. An application submitted pursuant to 310 CMR 19.033 or 19.034, as applicable, for a modification of a landfill, combustion facility or handling facility not addressed at 310 CMR 19.038(1)(a), (b), (c) or (e) shall comply with the criteria set forth at 310 CMR 19.038(2)(a)1. through 12, except 12 does not apply to a handling facility.
- (e) Post-closure Use. A permit application submitted pursuant to 310 CMR 19.033 or 19.034, as applicable, for the post-closure use of a facility shall comply with the criteria set forth at 310 CMR 19.038(2)(a)1., 3., 4., 6., 8., and 10.

19.041: Authorization to Construct.

(1) General. The following shall not be constructed except in accordance with a valid authorization to construct issued by the Department in writing:

- (a) a new or expanded facility for which a permit has been issued;
- (b) modifications to a facility for which a permit modification has been issued, except for a transfer station that is not a C&D waste transfer station; or
- (c) a new phase in the case of a landfill being developed in phases.

(2) Filing. The owner or operator shall file a request for an authorization to construct in writing with the Department in the appropriate Regional Office. However, unless otherwise indicated, the Department shall consider an application for a solid waste management facility permit or an application to modify a permit to constitute a request for an authorization to construct.

(3) Issuance. In general, the Department shall issue an authorization to construct when the solid waste management facility permit or permit modification is issued, except in the case of phased construction of a landfill where an authorization to construct may be required for each phase and except where the Department determines that any of the following permits has not been applied for, as applicable, or granted at the time the solid waste management facility permit is to be granted:

- (a) Massachusetts Surface Water Discharge Permit for point source discharges to surface waters pursuant to M.G.L. c. 21, § 43 and 314 CMR 3.00;
- (b) ground water discharge permit pursuant to M.G.L. c. 21, § 43 and 314 CMR 5.00, as may be amended;
- (c) storm water discharge permit pursuant to M.G.L. c. 21, § 43, and 40 CFR 122 and 314 CMR 9.00;
- (d) sewer connection permit for the discharge of collected and or pre-treated leachate into a municipal sewer system as required by 314 CMR 7.00;
- (e) Federal Water Pollution Control Act section 404 dredge and fill permit relative to surface water pursuant to the Federal Water Pollution Control Act; and
- (f) other local, state and federal permits, approvals or authorizations that are required for the construction of the facility.

(4) Sunset. If construction of the facility or first phase thereof has not been completed or no solid waste has been processed or disposed at the facility within three years of the date of issuance of an authorization to construct the authorization shall expire. The owner or operator may apply to the Department for an extension of the authorization at any time prior to or after it expires.

(5) Enforcement. The issuance of an authorization to construct shall not limit the Department's right to take enforcement action, including, without limitation, the suspension, revocation or modification of the permit or revocation of the authorization to construct if 310 CMR 19.000 or any condition of the permit or authorization to construct is violated.

(6) Deed Notice. In accordance with M.G.L. c. 111, § 150A, the owner or operator of a facility shall record a notice of the authorization to construct permit in the registry of deeds or, if the site is registered land, in the registry section of the land court for the district wherein the land lies.

The notice shall be captioned “Notice of Authorization to Construct a Solid Waste Facility” and shall contain a title reference citing the source of title of the land on which the facility is to be constructed (i.e., the deed with book and page number if recorded land; probate number if acquired through a probate proceeding; and certificate of title number if registered land).

19.042: Authorization to Operate.

(1) General. No person shall operate a facility, or if a new or existing facility is developed in phases, operate in any new phase of a facility, without a valid authorization to operate issued by the Department in writing.

(2) Transfer Station Exclusion. 310 CMR 19.042(1) does not apply to a transfer station, except a C&D waste transfer station.

(3) Filing. The applicant shall file a request for an authorization to operate in writing with the Department in the appropriate Regional Office.

(4) Issuance. An authorization to operate shall only be issued after the Department is persuaded by the applicant that:

(a) appropriate financial assurance has been secured in accordance with 310 CMR 19.051;

(b) as-built plans, signed and stamped by a registered professional engineer, have been submitted where required by the Department;

(c) the deed notice regarding the authorization to construct a solid waste facility has been recorded or registered as required pursuant to 310 CMR 19.041(6); and

(d) the construction of the facility or phase thereof is complete and the facility is operational. For the purposes of 310 CMR 19.042 a facility shall be considered complete when:

1. the facility has been constructed and prepared in conformance with the approved design plan required under 310 CMR 19.030(3), including the recycling and composting components of that plan;
2. the ditches, drains, roads, fences, water lines, collection systems, and other appurtenances shown on the approved plans are complete and functional;
3. all equipment needed for normal operation of the facility is available and fully operational;
4. all site preparation for the first six months of operation of a new facility or appropriate period for the phase, if applicable, is completed;
5. sufficient number of qualified staff and supervision is available to carry out the normal operation and maintenance of the facility in accordance with approved plans;
6. approved recycling and composting activities will be implemented as approved in accordance with an implementation schedule approved by the Department;
7. the applicant has provided proof of receipt of all applicable other state, local and federal permits that are required for the operation of the facility; and
8. the facility is otherwise in compliance with all applicable portions of 310 CMR 19.000.

(5) Renewal of an Authorization to Operate.

(c) Conditions and Terms of a Renewal. The Department may include all conditions of the original authorization to operate and, pursuant to 310 CMR 19.036, may establish new conditions for the authorization to operate based on the owner and operator's record of compliance with applicable laws and regulations, the site assignment, plan submissions, public health and environmental impacts of the facility, revisions of the regulations, the facility financing requirements and remaining capacity of the facility.

(6) Enforcement. The issuance of an authorization to operate shall not limit the Department's right to take enforcement actions, including, without limitation, the suspension, revocation or modification of the permit or revocation of the authorization to operate, if any provision of 310 CMR 19.000 or any condition of the permit, authorization to operate or any order issued by the Department is violated.

19.043: Conditions for Permits and other Approvals.

(5) Standard Conditions. The following conditions shall apply to all owners and operators:

(a) Duty to Comply. The owner and operator shall comply at all times with the terms and conditions of the permit or other approval, 310 CMR 19.000, M.G.L. c. 111, § 150A, and all other applicable state and federal statutes and regulations, including, but not limited to, the permit review criteria at 310 CMR 19.038(2)(a)1. through 10.

(b) Duty to Maintain. The owner and operator shall always operate and maintain all facilities, environmental control and monitoring systems, vehicles and equipment as required by the facility permit or other approval.

(c) Duty to Halt or Reduce Activity. The owner and operator shall halt or reduce activity whenever necessary to maintain compliance with the conditions of the permit or other approval, or to prevent an actual or potential threat to the public health, safety or the environment.

(d) Duty to Mitigate. The owner and operator shall remedy and shall act to prevent all potential and actual adverse impacts to persons or the environment resulting from non-compliance with terms or conditions of the permit or other approval. The owner and operator shall repair at his own expense all damages caused by such non-compliance.

(e) Duty to Provide Information. The owner and operator shall furnish to the Department, within a reasonable time, any information which the Department may request and which is deemed by the Department to be relevant in determining whether cause exists to modify, revoke, or suspend a permit or other approval, or to determine if the owner and operator is complying with the permit or other approval.

(f) Entries and Inspections. The owner and operator shall allow personnel or authorized representatives of the Department, without warrant, upon presentation of Department-issued identification to enter the facility to investigate, sample and inspect any records, condition, equipment, operation, practice or property at the facility relating to regulated activities to determine and enforce compliance with M.G.L. c. 21A, §§ 2 and 8, St. 1987, c. 584, M.G.L. c. 21H, M.G.L. c. 111, §§150A and 150A1/2 and/or 310 CMR 19.000.

(g) Records. All records and copies of all reports required by 310 CMR 19.000 shall be kept by the owner or operator for at least three years. This period shall be automatically

extended for the duration of any enforcement action. This period also may be extended by order of the Department. All record-keeping shall be in compliance with 310 CMR 19.009.

(h) Signatory Requirement. All reports, and information requested or ordered by the Department, shall be signed by a responsible official of the owner or operator in accordance with 310 CMR 19.011(1).

(i) Duty to Inform. The owner and operator shall have a continuing duty to immediately:

1. correct any incorrect facts in an application, report or other document submitted to the Department;
2. report or provide to the Department any omitted facts which should have been submitted to the Department at any time;
3. report to the Department, in advance, each planned change in the facility or activity which might result in non-compliance with a term or condition or a permit or approval;
4. report to the Department each change in the information listed in the application filed pursuant to 310 CMR 19.030;
5. report by the next business day any emergency condition (such as, but not limited to, a fire) that will have an extended impact on facility operations or pollution control, unless required to notify on a different schedule in accordance with 310 CMR 19.132 or 310 CMR 40.0000; and
6. notify the Department of any change in the owner's or operator's name or mailing address.

(j) Notification of Bankruptcy. The owner and operator shall notify the Department by certified mail of the commencement of a voluntary or involuntary proceeding pursuant to Title 11 (Bankruptcy) of the United States Code in which the owner or operator is named as debtor within ten days after commencement of the proceeding.

19.044: Transfer of Permits

(1) General. No sale, assignment, or transfer of the rights or privileges, or effective control of such rights or privileges, granted under a permit to establish, expand, construct, operate or maintain a facility, shall be valid until a responsible official of the transferee submits a transfer certification (on a form prepared by the Department) in accordance with 310 CMR 19.011(1) to the Department indicating:

(a) proof that notice that the facility is operating or was operated has been recorded in the registry of deeds, or if the site is registered land, in the registry section of the land court for the district wherein the land lies. The notice shall be captioned "Notice of Solid Waste Facility" and shall contain a title reference citing the source of title of the land on which the facility is to be constructed (i.e., the deed with book and page number if recorded land; probate number if acquired through a probate proceeding; and certificate of title number if registered land). This notice shall be incorporated either in full or by reference into all future deeds and any other instrument of transfer, which convey an interest in and/or a right to use the land on which the facility, or a portion thereof, is located;

(b)

the transferee is responsible to correct any and all conditions at the site or facility which result in a threat to public health, safety or the environment or constitute violations of the site assignment, laws, regulations or conditions of the permit, approvals, or authorizations

existing at the time of transfer whether or not such conditions are the subject of a Department enforcement action prior to the date of the transfer. A transfer of a permit shall not relieve previous owners of liability for the site under M.G.L. c. 21E or c. 21H; and

(c) the transferee has obtained financial assurance as required under 310 CMR 19.051. Where financial assurance is required no transferee shall operate without said financial assurance.

19.061: Special Waste

(1) General. The management of special waste shall not result in adverse impacts to the public health, safety or the environment or result in nuisance conditions. Management of a special waste comprises the receipt, handling, storage, processing, treatment and/or disposal of such special waste.

(a) Except as provided below at 310 CMR 19.061(3), the owner and operator of a facility may manage a special waste without prior written approval from the Department.

(b) The owner and operator of a facility with an existing special waste(s) approval issued before **[the effective date of the regulations]** may continue to manage such special waste in accordance with the existing approval(s) or, alternatively, may manage special waste in accordance with 310 CMR 19.061 provided that:

1. an owner or operator of a transfer station that is not a C&D waste transfer station submits a certification in accordance with 310 CMR 19.035; or
2. an owner or operator of any other type of facility makes a submission in accordance with 310 CMR 19.034.

(2) Exclusions. The following special wastes are not subject to the management requirements of 310 CMR 19.061(3):

(a) Asbestos waste that consists of:

1. intact and unbroken vinyl asbestos tile (VAT);
2. asphaltic asbestos-containing siding products and asphaltic asbestos-containing roofing materials such as roofing felts and roofing shingles¹; or
3. other asbestos waste excluded by the Department in writing from the management requirements of 310 CMR 19.061(3).

(b) Medical or biological waste that has been rendered non-infectious in accordance with 105 CMR 480.000, *Minimum Requirements for the Management of Medical or Biological Waste (State Sanitary Code Chapter VIII)*, and is packaged, labeled and otherwise managed in accordance with 105 CMR 480.000, *Minimum Requirements for the Management of Medical or Biological Waste (State Sanitary Code Chapter VIII)*.

(3) Management Requirements for Asbestos Waste, Medical or Biological Waste, and Sludge.

(a) General Requirements. The following requirements shall apply to any facility handling or disposing asbestos waste, medical or biological waste, or sludge unless such material has been excluded pursuant to 310 CMR 19.061(2):

¹ Other asbestos-containing roofing shingles and siding products such as those containing a cementitious binding characterized as being hard and brittle are subject to the management requirements of 310 CMR 19.061(3).

1. at least 45 days prior to accepting asbestos waste, medical or biological waste, or sludge, the facility owner or operator submits to the appropriate Regional Office of the Department and the board of health of the municipality where the facility is located:
 - a. a certification in accordance with 310 CMR 19.035 for a transfer station which is not a C&D waste transfer station; or
 - b. a presumptive approval application in accordance with 310 CMR 19.034 for any other type of facility.
 2. The submission shall include:
 - a. the type and quantity of asbestos waste, medical or biological waste, or sludge intended to be managed on a daily, weekly, monthly and yearly basis; and
 - b. the intended methods to be employed for managing the asbestos waste, medical or biological waste or sludge.
- (b) Specific Requirements for Managing Asbestos Waste. In addition to the requirements at 310 CMR 19.061(1) and (3)a., asbestos waste shall be managed as follows:
1. Asbestos waste shall not be accepted for disposal at a solid waste combustion facility;
 2. Asbestos waste that has not been properly wetted, containerized and labeled according to 310 CMR 7.15 shall not be accepted at any facility;
 3. Asbestos waste that has been properly wetted, containerized and labeled shall be managed so as to maintain the integrity of the containers and to prevent emissions of asbestos fibers to the ambient air; and
 4. Landfill Specific Requirements. In addition to the above requirements, any owner and operator of a landfill that receives asbestos waste shall observe the following requirements:
 - a. Asbestos waste shall be immediately disposed in the landfill and shall not be stored at the landfill prior to placement in the landfill;
 - b. Asbestos waste shall be placed in the landfill in such manner as to prevent the release of asbestos fibers to the ambient air during placement;
 - c. Asbestos waste placed in the landfill shall immediately be covered by sufficient amounts of either solid waste that does not contain asbestos or daily cover material, to assure that no asbestos fibers are released to the ambient air during or subsequent to compaction;
 - d. Accurate records shall be maintained of the surveyed location(s) in the landfill of all asbestos waste. Locations of asbestos waste deposition shall be noted in the Notice of Landfill Operation required pursuant to 310 CMR 19.141. Locations of asbestos waste deposition shall also be included whenever information regarding the facility is recorded in the chain of title for the property on which the landfill operates pursuant to M.G.L. c. 111, § 150A;
 - e. Areas of the landfill containing asbestos waste shall be clearly marked by the operator;
 - f. Areas of the landfill containing asbestos waste shall not be excavated unless written approval is issued by the Department; and
 - g. compliance with the applicable requirements of 40 CFR 61.154.

(c) Requirements for Managing Medical or Biological Waste. In addition to the requirements at 310 CMR 19.061(1) and (3)a., any owner and operator of a facility managing medical or biological waste shall manage such waste as follows:

1. Medical or biological waste shall be treated, packaged, labeled and disposed of in accordance with 105 CMR 480.000: *Minimum Requirements for the Management of Medical or Biological Waste (State Sanitary Code Chapter VIII)*.
2. Landfills. Medical or biological waste shall not be disposed in a landfill unless the waste is rendered non-infectious in accordance with 105 CMR 480.000: *Minimum Requirements for the Management of Medical or Biological Waste (State Sanitary Code Chapter VIII)*.

(d) Requirements for Managing Sludge. In addition to the requirements at 310 CMR 19.061(1) and (3)a., any owner and operator of a facility shall manage sludge as follows:

1. General Requirements. Disposal of any sludge shall comply with the following requirements:
 - a. a sludge may be accepted at a disposal facility only after recycling or other reuse options, such as land application, conversion and composting, have been investigated by the applicant or by the generator of such sludge;
 - b. a sludge accepted at a facility shall not contain free draining liquids; and
 - c. a sludge disposed at a landfill shall contain a minimum of 20% solids.
2. Landfill Requirements for Sewage Treatment and Water Treatment Sludges. In addition to the requirements set forth at 310 CMR 19.061(3)(d)1., any owner or operator of a landfill shall ensure that sewage treatment and water treatment sludge disposed at a landfill shall be incorporated into the active face of a landfill in a 3:1 mixture of solid waste to sludge or placed in a designated area and covered immediately.

19.081: Enforcement Provisions

(1) Wherever these regulations, 310 CMR 19.000, or any approvals or orders issued pursuant thereto, require that the owner and/or operator shall take action or refrain from taking action, the owner and operator shall be jointly and severally liable such that the Department may take action for any violations of 310 CMR 19.000 against the owner, the operator or both.

(2) General. No standard, requirement or condition established in 310 CMR 19.000 or provision of any permit, authorization, modification, determination, or other approval or order or other enforcement document issued pursuant to 310 CMR 19.000, shall be construed to limit any right of the Department to take enforcement action pursuant to any other authority. Any failure by any person whose activities are governed by M.G.L. c. 111, § 150A, as amended, and 310 CMR 19.000, to comply fully with the provisions thereunder or the terms and conditions of any order, permit, authorization, modification, determination, or other approval or order or other enforcement document issued pursuant to 310 CMR 19.000, or with the terms of a site assignment, shall constitute a violation of M.G.L. c. 111, § 150A and 310 CMR 19.000. It shall also be a violation of 310 CMR 19.000 for any person to:

- (a) Fail to submit a certification, log, application for a permit or permit modification, plan, report, third-party inspection report, or any other document within the time period specified in 310 CMR 19.000 or in any approval, order, or permit issued by the Department;

- (b) Provide or cause to be provided any false, inaccurate, incomplete or misleading information, in any certification, log, application for a permit or permit modification, plan, report, third-party inspection report, third-party inspector qualifications statement, or any other document which that person is required to submit to the Department pursuant to 310 CMR 19.000;
- (c) Provide any false, inaccurate, incomplete or misleading information to a third-party inspector or influence a third-party inspector to provide any false, inaccurate, incomplete or misleading information in any certification, third-party inspection report or other submittal to the Department pursuant to 310 CMR 19.000;
- (d) Alter or misrepresent the findings or recommendations made by a third-party inspector in a third-party inspection report submitted to the Department pursuant to 310 CMR 19.018;
- (e) Hold himself or herself out as a responsible official when he/she is not fully authorized to bind the entity he/she claims to bind;
- (f) Fail to comply fully with the applicable standards, requirements or conditions established in 310 CMR 19.000 or with the provisions of any permit, authorization, modification, determination, or other approval or order issued, or with the terms and conditions of any certification submitted, pursuant to 310 CMR 19.000;
- (g) Act without submitting a certification in accordance with 310 CMR 19.000 or without a permit or other approval issued pursuant to 310 CMR 19.000 or site assignment where one is required; or
- (h) Violate any other provision of 310 CMR 19.000.

(3) Action by the Department. Whenever the Department has cause to believe that a violation has occurred, it may without limitation:

- (a) order the owner or operator of the site or facility, or any other person responsible for the violation, to cease operations until the violation is corrected to the satisfaction of the Department, or until such person obtains a site assignment, solid waste facility permit, and any other applicable approval pursuant to 310 CMR 19.000, or other applicable permit pursuant to 310 CMR 16.00;
- (b) order the owner or operator of the site or facility, or any other person responsible for the violation, to cease immediately or at a specified date all illegal activity, and to comply fully with M.G.L. c. 21A, §§ 2 and 8, St. 1987, c. 584, M.G.L. c. 21H, M.G.L. c. 111, §§ 150A and 150A1/2, 310 CMR 19.000, or any permit, authorization, certification, determination, or approval submitted or issued pursuant to 310 CMR 16.00 or 310 CMR 19.000;
- (c) order the owner or operator of the site or facility, or other person responsible for the violation, to take appropriate remedial measures, immediately or by a specified date, to bring the site or facility into compliance to the satisfaction of the Department or to protect public health or safety or the environmental resources of the Commonwealth, including without limitation, closure of the site or facility;
- (d) commence proceedings pursuant to 310 CMR 19.040 to rescind, suspend, revoke, or modify a permit;
- (e) commence proceedings pursuant to M.G.L. c. 111, § 150A to rescind, suspend, or modify a site assignment;
- (f) issue a notice of non-compliance or assess a civil administrative penalty pursuant to

M.G.L. c. 21A, § 16 and 310 CMR 5.00 or initiate an enforcement action in accordance with applicable statutes and regulations;

(g) refer the matter to the Attorney General for civil or criminal action pursuant to any applicable statute; or

(h) take such other action as provided by 310 CMR 19.000 or other applicable statutory or regulatory authority as the Commissioner deems appropriate.

(4) Service of Notices and Orders. Service in all civil administrative penalty actions is governed by 310 CMR 5.00. The Department serves an order according to the following procedure except for processes, notices, and orders issued in the course of an adjudicatory hearing, which are governed by the provisions of 310 CMR 1.00:

(a) Service of an order may be made via hand delivery or mail. Service of an order when made by any form of mail requiring the return of a receipt signed by the person to be served is complete upon receipt by the person or by any officer, employee, or agent of the person authorized by appointment of the person or by law to accept service. The fact and date of service is established by the returned receipt or by affidavit of the person who hand delivery the order.

(b) The Department may make service of an order in any other manner, including any form of telecommunications or publication, that is reasonably calculated to give actual notice of the order to the person to be served. The Department may use such alternative or substitute methods of service when the recipient refuses to accept service by the means set forth in 310 CMR 19.081(4)(a) or when exigent circumstances require its doing so. The fact and date of service in such cases is established by such records as may be available.

(5) Right to Adjudicatory Hearing. Subject to the provisions of 310 CMR 19.081(6), a person who is the subject of an order issued pursuant to 310 CMR 19.081(3) shall have the right to an adjudicatory hearing on such order pursuant to 310 CMR 1.01. Any right to an adjudicatory hearing concerning assessment of a civil administrative penalty shall be determined in accordance with the provisions of 310 CMR 5.00.

(6) Waiver of Right to Adjudicatory Hearing. Any person who is the subject of an order issued pursuant to 310 CMR 19.081(3) shall be deemed to have waived the right to an adjudicatory hearing, unless, within 21 days of the date of service of the order, the Department receives a written statement setting forth the basis for the request, subject to and in compliance with the applicable provisions of 310 CMR 1.01.

(7) Burden of Persuasion. In an adjudicatory hearing under 310 CMR 19.081(5), the burden shall be on the person conducting the solid waste activities regulated pursuant to 310 CMR 19.000 to persuade the Department that:

(a) the solid waste activity does not create public nuisance conditions and does not pose a threat to public health, safety or the environment; and

(b) the person conducting the solid waste activities is and will continue to be in compliance with M.G.L. c. 111, s. 150A and 310 CMR 19.000.

19.130: Operation and Maintenance Requirements

(1) General. An operator shall incorporate procedures and practices, in accordance with approved plans and permit conditions, such as proper sequencing of landfill operations, proper grading of the site, proper maintenance of drainage and collection systems, and the application of adequate amounts and appropriate types of cover materials, which will prevent pollution of ground water, surface water and air quality and prevent nuisance conditions from developing.

(2) Operator Supervision. The overall care, maintenance and management for a landfill shall be under the direction of a qualified operator.

(3) Special Wastes. No solid waste that is a special waste shall be received or disposed at any landfill unless the provisions of 310 CMR 19.061 are satisfied and the special waste is managed in accordance with any conditions specified by the Department in any approval to manage the special waste.

(4) Banned or Restricted Solid Wastes. Any solid waste which has been banned or restricted from disposal pursuant to 310 CMR 19.017 shall be managed at a landfill in accordance with the facility's waste ban compliance plan prepared and approved in accordance with 310 CMR 19.017(5) unless an exception has been granted under 310 CMR 19.017(6).

(35) Inspections.

(a) The facility shall be inspected by a third-party inspector in accordance with 310 CMR 19.018.

19.132: Environmental Monitoring Requirements

(1) General. The owner or operator shall conduct monitoring of surface water, ground water, landfill gas and any other media as determined by the Department, including without limitation soil and sediment, on a schedule established in the permit or as otherwise required by Department. The owner or operator of facility that submits environmental monitoring results under the provisions of 310 CMR 19.132 shall ensure that analytical and environmental monitoring data submitted to the Department is scientifically valid and defensible, and of a level of precision and accuracy commensurate with its stated or intended use. Compliance with this performance standard includes, but is not limited to:

(a) employing procedures and methodologies for the collection and analysis of soil, sediment, water (or other liquids), vapor, air, and/or waste samples that consist of:

(1) methods published by the Department, the U.S. Environmental Protection Agency, the American Society for Testing and Materials (ASTM), the American Public Health Association (APHA), the National Institute for Occupational Safety and Health (NIOSH), the American Water Works Association (AWWA), and other organizations with expertise in the development of standardized analytical testing methods; or

(2) other methods approved by the Department.

(b) retaining a person who is qualified by education, training and experience to perform sample collection and analysis.

(2) Surface and Ground Water Monitoring.

(a). The owner and operator shall ensure that surface and ground water monitoring are conducted at any active landfill and during the facility's post-closure period set forth in 310 CMR 19.142.

(b) The owner or operator of a facility shall conduct surface and ground water monitoring at sampling points established in the permit and/or as required by the Department. The ground water point of compliance for a landfill shall be no more than 150 meters from the edge of the waste disposal area (as delineated in the facility's current permit, specified in the engineering plans referenced in the permit, or as otherwise delineated by the Department), or the property line, whichever is less.

(c) The owner or operator shall establish background surface water and ground water quality at sampling points hydraulically upgradient of the landfill. Background water quality shall be determined by a minimum of four quarterly rounds of samples for each of the monitoring parameters or constituents listed in 310 CMR 19.132(2)(h).

(d) The owner or operator shall conduct surface and ground water monitoring on a schedule established in the permit or as required by the Department. At a minimum, monitoring shall be performed semi-annually except as required pursuant to 310 CMR 19.132(2)(c), unless the Department approves or orders, in writing, a different frequency of sampling.

(e) The Department may refuse to accept monitoring data where:

1. the sample was taken from a ground water monitoring well for which the Department has not received and approved as-built construction plans, boring logs and well locations;
2. the sample was taken from a ground water monitoring well constructed in a manner not approved by the Department;
3. the analyses were performed by a laboratory other than a Massachusetts certified laboratory, unless the sample is accompanied by a complete QA/QC submittal;
4. the sample was not handled in accordance with the sampling and preservation requirements (*e.g.*, sample container, holding time and sample volume) specified by the testing method;
5. the sample was taken from a monitoring device or location that is damaged or has not been maintained in accordance with 310 CMR 19.133;
6. the sample does not contain sufficient documentation regarding chain of custody;
7. the sample was not collected or analyzed in accordance with 310 CMR 19.132(1); or
8. the Department has reason to believe the sampling data is false, inaccurate, incomplete or misleading.

(f) The owner or operator shall submit all analytical results to the Department within 60 days after the date of sample collection or as specified in the permit or as otherwise required by the Department. The analytical results shall be summarized in tables with a discussion of the results including a trend analysis. Where the Department provides a form for environmental monitoring reports, the report shall be submitted on that form and shall contain all information as requested by that form. If no form is provided by the Department, the report shall include, unless otherwise approved by the Department, the following information:

1. site plans or maps showing sampling locations, distribution of contaminants, groundwater contours and groundwater flow direction;
 2. a letter report briefly summarizing the data and identifying any issues of concern;
 3. all field Quality Assurance/Quality Control information; and
 4. chain of custody forms.
- (g) The owner or operator shall record static ground water elevations and total well depth prior to collecting a ground water sample whenever a monitoring well is to be sampled.
- (h) At a minimum, the owner or operator shall analyze surface and ground water samples for the following parameters, unless otherwise approved by the Department based on review of past monitoring results or other relevant information:
1. Indicator parameters:
 - a. pH (in situ);
 - b. Alkalinity;
 - c. Temperature (in situ);
 - d. Specific Conductance (in situ);
 - e. Nitrate Nitrogen (as Nitrogen);
 - f. Total Dissolved Solids;
 - g. Chloride;
 - h. Calcium;
 - i. Sodium;
 - j. Iron;
 - k. Manganese; and
 - l. Sulfate
 - m. Chemical Oxygen Demand (COD)
 - n. Dissolved Oxygen
 2. Inorganics:
 - a. Arsenic;
 - b. Barium;
 - c. Cadmium;
 - d. Chromium
 - e. Copper
 - f. Cyanide;
 - g. Lead;
 - h. Mercury;
 - i. Selenium;
 - j. Silver; and
 - k. Zinc.
 3. all of the compounds included in EPA Method 8260, and methyl ethyl ketone, methyl isobutyl ketone, acetone and 1,4 dioxane. In addition, unknown peaks having intensities greater than five times the background intensity shall be identified (Method 8260 is detailed in the EPA publication SW-846, entitled *Test Methods for Evaluating Solid Waste.*); and
 4. any additional parameters required by the Department.
- (i) The owner or operator shall ensure that practical quantitation limits (or laboratory reporting limits) meet or are below the Maximum Contaminant Level (MCL) or

applicable standard for each analyte tested. If not, the Department will not accept the data.

(j) If the concentrations of any of the parameters listed in 310 CMR 19.132(2)(h) exceed the state or federal drinking water standards, Maximum Contaminant Levels (MCLs), Ambient Water Quality Standards for surface water samples established at 314 CMR 4.00, or alternative standards established in a permit, or guidelines or standards established by a permit, order or authorization issued by the Department for contaminants for which no federal or state standard exists, at any sampling point, the owner or operator shall:

1. notify the Department within 14 days of the finding; and
2. collect, analyze and submit to the Department another round of samples within 60 days of the prior date of sample collection and determine the concentration of all parameters identified in 310 CMR 19.132(2)(h) that were exceeded, unless otherwise specified by the Department.

(k) Where the Department determines, at any time, based upon the ground and surface water analyses from the facility, upgradient water quality and baseline water quality, that assessment and corrective actions shall be required, the owner or operator shall undertake the assessment and/or corrective actions as determined by the Department. Such assessment shall characterize the full nature and extent of contamination, and the risks of harm to public health, safety and the environment in accordance with the requirements of 310 CMR 19.150 *et seq.* and 310 CMR 40.0114. In establishing the applicable standards for groundwater down-gradient of the point(s) of compliance the Department shall consider the factors and procedures contained in sections 310 CMR 40.0900 and 310 CMR 40.1000.

(l) Nothing in this section shall limit the responsibility of the owner or operator to comply with the provisions of M.G.L. c. 21H, § 4, M.G.L. c. 111, § 150A, 310 CMR 19.150, M.G.L. c. 21E, and 310 CMR 40.0000 at all locations down-gradient of the point(s) of compliance.

(3) Monitoring of the Secondary Leachate Collection or Leak Detection System.

(a) The owner or operator shall monitor the quantity and quality of leachate collected by the secondary leachate collection system or leak detection system, where such a system has been constructed. Monitoring shall be accomplished as specified in the solid waste management facility permit, the leachate discharge permit or as deemed necessary by the Department.

(b) The owner or operator shall submit, in addition to permit requirements, the results of the leachate monitoring from the secondary leachate collection system or leak detection system to the Department with third-party inspection reports.

(c) Where leachate is determined by the Department to have entered the secondary leachate collection system or leak detection system in excess of design standards, the owner or operator shall undertake the actions specified under 310 CMR 19.150 and 310 CMR 19.151 as required by the Department.

(4) Leachate Monitoring.

(a) The owner or operator shall monitor the quantity and quality of leachate as deemed necessary by the Department or as specified in the leachate discharge permit.

(b) The owner or operator shall submit, in addition to permit requirements, the results of the leachate monitoring to the Department with the inspection reports required pursuant to 310 CMR 19.130(35).

(5) Gas Monitoring.

(a) The owner or operator shall sample and physically and chemically characterize the recovered gas, condensates, or any other residues generated, and submit a copy of such analyses to the Department.

(b) The owner or operator shall conduct gas monitoring as follows:

1. Sampling and analysis of landfill gas shall be done in accordance with methods approved by the Department.
2. The owner or operator shall conduct landfill gas monitoring at sampling points established in the permit and/or as required by the Department.
3. The owner or operator shall conduct landfill gas monitoring on a schedule established in the permit or as required by Department. Monitoring shall be performed quarterly unless otherwise approved by the Department.

(c) The Department may not accept landfill gas monitoring data where:

1. the sample was taken from a gas monitoring device for which the Department has not received and approved as-built construction plans and locations; or
2. the sample was taken from a gas monitoring device constructed in a manner not approved by the Department;
3. the analyses were performed by a laboratory other than an approved laboratory, unless the sample is accompanied by a complete QA/QC submittal;
4. the sample was taken from a monitoring device or location that is damaged or has not been maintained in accordance with the requirements of 310 CMR 19.133;
5. the sample was taken from a monitoring device or location that is damaged or has not been maintained in accordance with 310 CMR 19.133;
6. the sample does not contain sufficient documentation regarding chain of custody;
7. the sample was not collected or analyzed in accordance with 310 CMR 19.132(1); or
8. the Department has reason to believe the sampling data is false, inaccurate, incomplete or misleading.

(d) The owner or operator shall submit all analytical results to the Department within 60 days after the date of sample collection or as specified in the permit. The analytical results shall be summarized in tables with a discussion of the results, and shall include an analysis of pertinent trends. Where the Department provides a form for environmental monitoring reports, the report shall be submitted on that form and shall contain all information as requested by that form. If no form is provided by the Department, the report shall include, unless otherwise approved by the Department, the following information:

1. site plans or maps showing sampling locations, concentrations and gas exceedences;
2. a letter report briefly summarizing the data and identifying any issues of concern;

3. all field Quality assurance/Quality control information; and
 4. chain of custody forms.
- (e) The owner or operator shall conduct gas monitoring at any active landfill and for the post-closure period set forth in 310 CMR 19.142(2).
- (f) Landfill gas samples shall be analyzed for volumes and concentrations of explosive gases. In addition, the Department may require monitoring for the following:
1. hydrogen sulfide;
 2. volatile organic compounds; and
 3. any additional parameters required by the Department.
- (g) When, at any time, the concentration of explosive gasses exceeds 10% of the lower explosive limit (LEL) in any building, structure, or underground utility conduit, excluding gas control, gas recovery and leachate collection system components, the owner/operator shall:
1. take immediate action to protect human health and safety;
 2. notify the Department's Regional Office that covers the municipality in which the facility is located within two hours of the finding; and
 3. undertake the actions specified under 310 CMR 19.150 and 310 CMR 19.151 as required by the Department.
- (h) Except in buildings, structures and underground utility conduits for which 310 CMR 19.132(4)(g) applies, when, at any time, the concentration of explosive gasses exceeds 25% of the lower explosive limit (LEL) at the property boundary or beyond, excluding gas control, gas recovery and leachate collection system components, the owner/operator shall:
1. take immediate action to protect human health and safety;
 2. notify the Department's Regional Office that covers the municipality in which the facility is located within 24 hours of the finding; and
 3. undertake the actions specified under 310 CMR 19.150 and 310 CMR 19.151 as required by the Department.
- (i) When the concentration of any of the parameters for which monitoring is required at 310 CMR 19.132(4)(f)1., 2. or 3. Exceeds any permit standards or federal or state regulations the owner/operator shall notify the Department within 14 days of the finding and undertake the actions specified under 310 CMR 19.150 and 310 CMR 19.151 as required by the Department.

Standardizing

19.140: Landfill Closure Requirements

(6) **Completion of Closure.** A facility shall be deemed closed on the date of the Department's written determination that the closure of the facility has been completed in accordance with the permit.

- (a) A facility shall be deemed to be closed for the purposes of 310 CMR 19.000 on the date of the Department's determination. A facility shall be deemed to be closed only after

the applicant has documented that the Notice of Landfill Operation has been recorded or registered as required pursuant to 310 CMR 19.141 and the Department has issued its determination of closure.

(b) The post-closure period shall begin on the date of the Department's determination.

19.141: Notice of Landfill Operation

(1) Prior to obtaining a determination from the Department that closure of a landfill has been completed or an approval from the Department for a post-closure use of a landfill, the owner or operator of a landfill shall record a notice that a landfill has been operated on a site in the registry of deeds or in the registry section of the land court for the district wherein the landfill lies in accordance with M.G.L. c. 111, § 150A. The notice shall be captioned "Notice of Landfill Operation " and shall contain a title reference citing the source of title of the land on which the facility was constructed (i.e., the deed with book and page number if recorded land; probate number if acquired through a probate proceeding; and certificate of title number if registered land). This Notice shall be incorporated either in full or by reference into all future deeds, and any other instrument of transfer, which conveys an interest in and/or a right to use the land on which the facility, or a portion thereof, is located. The Notice shall contain the following:

- (a) identification of record owners of the property;
- (b) a description of the landfill site, by metes and bounds and by reference to an appropriate map or plan to be recorded therewith, signed by a qualified professional engineer or a land surveyor, depicting the boundaries of the filled area and the location of any and all leachate collection devices, gas and ground water monitoring wells associated with the site;
- (c) a detailed description of the type and extent of the final cap and cover on the landfill;
- (d) a description of the nature and duration of post-closure maintenance and monitoring requirements for the site and the amount and form of the financial assurance requirements pursuant to 310 CMR 19.000;
- (e) reference to the Department file number or other Department means for identifying the landfill file; and
- (f) the following statement:

The premises described herein are subject to the provisions of M.G.L. c. 111, § 150A and 310 CMR 19.000. Said premises shall not be used for any purpose other than as a landfill without the approval of the Department of Environmental Protection. Transfer of the facility requires the transfer of the permit in accordance with 310 CMR 19.044. The procedure for Department approval for any use other than as a landfill is set forth at 310 CMR 19.143. Such Department approval of other use is transferable or assignable only upon approval of the Department.

19.142: Landfill Post-closure Requirements.

(5) Post-closure Requirements. During the post-closure period the owner or operator (or successors or assigns thereto) shall perform the following activities on any closed portion of the facility:

- (a) take corrective actions to remediate and/or mitigate conditions that would compromise the integrity and purpose for the final cover;
- (b) maintain the integrity of the liner system and the final cover system;

- (c) collect leachate from and monitor and maintain leachate collection system(s);
- (d) monitor and maintain the environmental monitoring systems for surface water, ground water and air quality;
- (e) maintain access roads;
- (f) maintain landfill gas control systems;
- (g) protect and maintain surveyed benchmarks; and
- (h) have the landfill inspected by a third-party inspector in accordance with 310 CMR 19.018 and such third-party inspection shall be conducted in accordance with the frequency and other requirements of 310 CMR 19.018, unless more frequent inspections or more stringent requirements are contained in the terms of any approval, order or other document issued by the Department pursuant to 310 CMR 19.000.

(6) Inspection Requirements. The owner, operator, successor or assigns shall have the facility inspected by a third-party inspector in accordance with 310 CMR 19.018.

19.143: Post-closure Use of Landfills

(1) Applicability. Pursuant to M.G.L. c. 111, § 150A no site on which a facility was operated shall be used for any other purpose without:

- (a) a written approval for any post-closure use on a landfill's final cover or affecting an appurtenance to a landfill, including but not limited to appurtenances required for the management of leachate, landfill gas and stormwater; or
- (b) a presumptive approval in accordance with 310 CMR 19.034 for any other type of post-closure use at a landfill facility.

19.207: Handling Facility Operation and Maintenance Requirements

(25) Inspections.

The facility shall be inspected by a third party inspector in accordance with 310 CMR 19.018, and such third-party inspection shall be conducted in accordance with the frequency and other requirements of 310 CMR 19.018, unless more frequent inspections or more stringent requirements are contained in the terms of any approval, order or other document issued by the Department pursuant to 310 CMR 19.000.